

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 DAVID S. CHANEY  
Chief Assistant Attorney General  
3 FRANCES T. GRUNDER  
Senior Assistant Attorney General  
4 JONATHAN L. WOLFF  
Supervising Deputy Attorney General  
5 CHARLES J. ANTONEN, State Bar No. 221207  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5443  
Fax: (415) 703-5843  
8 Email: Charles.Antonen@doj.ca.gov

9 Attorneys for Defendants  
J. Woodford, E. Alameida, R. Kirkland, L. Chrones,  
10 G. Williams, N. Grannis, E. Fischer, D. Hawkes,  
M. Ruff, M. Hunter, J. Garcilazo, and W. Luper  
11

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 **ARCADIO S. ACUNA,**

17 Plaintiff,

18 v.

19 **LEA ANN CHRONES, et al.,**

20 Defendants.  
21

C 07-5423 VRW (PR)

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION TO  
DISMISS FOR FAILURE TO  
EXHAUST AND FAILURE TO  
STATE A CLAIM**

22 **TO PLAINTIFF ARCADIO ACUNA, IN PRO SE:**

23 **PLEASE TAKE NOTICE** that Defendants J. Woodford, E. Alameida, R. Kirkland, L.  
24 Chrones, G. Williams, N. Grannis, E. Fischer, D. Hawkes, M. Ruff, J. Garcilazo, M. Hunter, and  
25 W. Luper (Defendants) move this Court to dismiss Plaintiff's action under the unenumerated  
26 portion of Federal Rule of Civil Procedure 12(b) because Plaintiff, a state prisoner, failed to  
27 exhaust his administrative remedies before bringing this 42 U.S.C. § 1983 action as mandated by  
28 the Prison Litigation Reform Act (PLRA).

1       **PLEASE TAKE FURTHER NOTICE** that the Court may look beyond the pleadings  
 2 and decide disputed issues of fact when ruling on Defendants' unenumerated Rule 12(b) motion.  
 3 *Wyatt v. Terhune*, 315 F.3d 1108, 1119-20 (9th Cir. 2003). Plaintiff may provide evidence to the  
 4 Court to dispute that which is presented by Defendants. *Id.* at n.14.

5       **PLEASE TAKE FURTHER NOTICE** that Defendants move this Court to dismiss  
 6 Plaintiff's action under Federal Rule of Civil Procedure 12(b)(6) because Plaintiff's complaint  
 7 fails to state a claim not barred by the doctrines of res judicata and collateral estoppel, fails to  
 8 establish supervisor liability under 42 U.S.C. § 1983, and fails to demonstrate a constitutional  
 9 right to an administrative-appeals process.

10       **PLEASE TAKE FURTHER NOTICE** that Defendants move this Court to find that  
 11 Defendants are entitled to qualified immunity for Plaintiff's claims.

12       This motion is based upon this Notice, the Memorandum of Points and Authorities, the  
 13 declarations and exhibits filed in support, the request for judicial notice, as well as the pleadings  
 14 and records on file in this case.

15  
 16 Dated: June 23, 2008

17                               Respectfully submitted,

18                               EDMUND G. BROWN JR.  
 Attorney General of the State of California

19                               DAVID S. CHANEY  
 Chief Assistant Attorney General

20                               FRANCES T. GRUNDER  
 Senior Assistant Attorney General

21                               JONATHAN L. WOLFF  
 Supervising Deputy Attorney General

22                               /s/ Charles J. Antonen  
 23 CHARLES J. ANTONEN  
 Deputy Attorney General

24 Attorneys for Defendants  
 25 J. Woodford, E. Alameida, R. Kirkland, L. Chrones,  
 26 G. Williams, N. Grannis, E. Fischer, D. Hawkes,  
 27 M. Ruff, M. Hunter, J. Garcilazo, and W. Luper  
 28

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Acuna v. Chrones, et al.**

No.: **C 07-5423 VRW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **June 23, 2008**, I served the attached

**DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS FOR FAILURE  
TO EXHAUST AND FAILURE TO STATE A CLAIM**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

**DECLARATION OF N. GRANNIS IN SUPPORT OF DEFENDANTS' MOTION TO  
DISMISS**

**[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS UNDER  
RULE 12(b) AND 12(b)(6)**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Arcadio Acuna, C-43165**

**Pelican Bay State Prison**

**P.O. Box 7500**

**Crescent City, CA 95532**

Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 23, 2008**, at San Francisco, California.

J. Palomino

Declarant

/s/ J. Palomino

Signature